

FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

2006 FEB -3 A 949

Take Back the House (a.k.a Democratic Majority))

M. Mickey Williams, in his official)

MUR 5665

capacity as Treasurer)

SENSITIVE

GENERAL COUNSEL'S REPORT # 2

I. ACTIONS RECOMMENDED: Accept the attached proposed conciliation agreement

with Take Back the House (a.k.a. Democratic Majority) and M. Mickey Williams, in his official

capacity as Treasurer, take no further action as to AT&T Corporation, approve the appropriate

letters, and close the file.

II. BACKGROUND

On June 21, 2005, the Commission found reason to believe that Take Back the House

(a.k.a. Democratic Majority) and M. Mickey Williams, in his official capacity as Treasurer

(hereinafter "TBTH"), violated 2 U.S.C. §§ 441a(f), 441b(a) and 434(a) and 11 C.F.R. §§ 102.9,

103.3(b) and 104.5(c) by knowingly accepting excessive and prohibited contributions and failing

to file disclosure reports.

The Commission also

found reason to believe that AT&T Corporation (hereinafter "AT&T") violated 2 U.S.C.

§ 441b(a) by making a corporate contribution to TBTH and approved a conciliation agreement

with AT&T Corporation.¹

This matter originated from a referral by the Reports Analysis Division. The referral

provided the basis for the Commission's finding reason to believe that TBTH accepted a \$5,000

¹ In addition, on June 21, 2005, the Commission found reason to believe that the Interactive Digital Software Association PAC, now known as the Interactive Digital Software Association Nonfederal PAC 1 ("IDSA"), violated 2 U.S.C. § 441b(a) and 11 C.F.R. § 102.5(b).

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1 excessive contribution from an individual, a \$20,000 corporate contribution from AT&T, a
2 \$25,000 contribution from a labor organization, and a \$2,500 contribution from a nonfederal
3 committee that lacked sufficient federal funds to make a contribution in that amount to a political
4 committee.

5 On June 30, 2005, this Office notified TBTH and AT&T of the Commission's findings

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7 Counsel for

8 TBTH filed a response to the Commission's reason to believe findings on September 19, 2005
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14 AT&T responded to the Commission's findings on July 13, 2005, by contesting the
15 Commission's findings and providing documentary evidence indicating that it made a corporate
16 contribution to TBTH based upon the misconception that TBTH was a nonfederal committee and
17 TBTH's assurances that it could lawfully accept corporate contributions. In support, AT&T
18 provided an electronic mail message from TBTH's fundraiser stating that TBTH accepts
19 corporate contributions. See Electronic Mail message from K. Simpson to D. Macomber dated
20 Oct. 10, 2002. In addition, the letter accompanying AT&T's contribution specifically stated that
21 "AT&T's check is a corporate contribution which may not be used in connection with any

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1 activity subject to prohibitions on such contributions in the Federal Election Campaign Act.”

2 Letter from B. Johnson to P. Apfelbaum dated Oct. 30, 2002.²

3 **III. CONCILIATION**

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5 Prior to being named treasurer of TBTH in February 2002,
6 Mr. Williams's only political experience was as a staff member of the Democratic National
7 Committee, where he had no campaign finance responsibilities. *See* TBTH Response, at 2.
8 According to Mr. Williams, he was told that TBTH was a "soft money" PAC, which he
9 interpreted to mean that TBTH did not participate in federal elections and was therefore not
10 subject to the Act's requirements.⁴ *See id.* He did not understand that as a registered political
11 committee, TBTH was, in fact, subject to the requirements of the Act and should have
12 established a separate bank account for nonfederal contributions pursuant to 11 C.F.R.
13 § 102.5(a)(1). This lack of understanding is reflected in documentary evidence in which TBTH
14 advised AT&T and ISDA that it could accept nonfederal funds. *See, e.g.,* Electronic Mail
15 message from K. Simpson to D. Macomber dated Oct. 10, 2002.

16 Finally, after completing his current duties as treasurer, Mr. Williams does not intend to
17 serve as treasurer for any political committee, as defined in 2 U.S.C. § 431(4).
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⁴ During 2002, TBTH raised approximately \$100,000 (\$48,000 of which was from federally permissible sources) and made disbursements of approximately \$126,000. *See id.*, at 3. The vast majority of these expenditures were donations to nonfederal committees or nonprofit organizations. TBTH did, however, also make two contributions totaling \$1,625 to two federal committees. *See id.* These contributions were reported to the Commission. *See* 2002 July Quarterly Report.

B. AT&T Corporation

AT&T took the necessary steps to determine whether or not its contribution to TBTH was permissible. After receiving a solicitation from TBTH that stated "corporate checks accepted," AT&T sought advice from counsel as to whether or not it could make the requested contribution. See Attachment 2 (Electronic Mail message from M. Nemeroff to D. Macomber dated Oct. 2, 2002). AT&T then contacted TBTH and received an electronic mail message from TBTH's fundraiser confirming that TBTH accepts corporate contribution. See Attachment 3 (Electronic Mail message from K. Simpson to D. Macomber dated Oct. 10, 2002). Finally, the letter transmitting AT&T's contribution specifically stated that "AT&T's check is a corporate contribution which may not be used in connection with any activity subject to prohibitions on such contributions in the Federal Election Campaign Act." Attachment 4 (Letter from B. Johnson to P. Apfelbaum dated Oct. 30, 2002).

1 This correspondence is very similar to the exchange between TBTH and the Michigan
2 Regional Council of Carpenters ("MRCC"), the labor union that made a \$25,000 contribution to
3 TBTH. MRCC made its contribution to TBTH based on the understanding that TBTH was a
4 nonfederal committee. MRCC also informed TBTH that its contribution could not be used to
5 influence federal elections. See First General Counsel's Report, at 5-6. For these reasons, the
6 First General Counsel's Report did not recommend taking any action as to MRCC. Because
7 AT&T provided similar documentation indicating TBTH misinformed AT&T regarding its
8 ability to accept nonfederal funds, this Office recommends taking no further action as to AT&T
9 in this matter.

10 **IV. RECOMMENDATIONS**

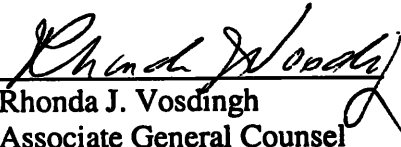
- 11 1. Accept the attached conciliation agreement with Take Back the House (a.k.a.
12 Democratic Majority) and M. Mickey Williams, in his official capacity as Treasurer;
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14 2. Take no further action as to AT&T Corporation;
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16 3. Approve the appropriate letters; and
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4. Close the file.

Lawrence H. Norton
General Counsel

2/2/06
Date

BY: 
Rhonda J. Vosdingh
Associate General Counsel
for Enforcement


Ann Marie Terzaken
Assistant General Counsel


Adam J. Schwartz
Attorney

Attachments

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